

NORMAN E. LEHRER, P.C.
Norman E. Lehrer
1205 North Kings Highway
Cherry Hill, New Jersey 08034
856.429.4100
patents@pobox.com
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

JESSICA ANN VOLINSKI,	:	
	:	
	:	CIVIL ACTION NO. 14-
Plaintiff,	:	
	:	
v.	:	
	:	COMPLAINT
DESIGN WORKS INTERNATIONAL, INC.	:	
and P & A MARKETING INC.,	:	
	:	JURY TRIAL DEMANDED
Defendants.	:	

Plaintiff, Jessica Ann Volinski, by her attorney, for her complaint against the
Defendants alleges and avers as follows:

THE PARTIES AND JURISDICTION

1. Plaintiff, Jessica Ann Volinski (“Volinski”) is an individual, residing at 29 Forest Court, Medford, New Jersey 08055.
2. Defendant, Design Works International, Inc. (“Design Works”) is a New York corporation, with its principal place of business at 45 West 36th Street, New York, New York 10018.

3. Defendant, P & A Marketing Inc. (“P & A”) is a New York corporation having its principal place of business at 10 Crescent Drive, Searingtown, New York 11507.

4. This Court has exclusive jurisdiction over this complaint under 28 U.S.C. §1338(a) in that the causes of action alleged herein arise under the Copyright Laws of the United States, 17 U.S.C. §101 et seq. and 17 U.S.C. §1201 et seq. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(a).

FACTS COMMON TO BOTH COUNTS

5. Volinski is a professional illustrator who creates and licenses her artwork, a significant portion of which consists of sketchy doodle designs.

6. Volinski’s artwork is made available online through one or more stock licensing websites such as Shutterstock.com. (“Shutterstock”)

7. In 2009, Volinski created a design entitled “3D Peace Sign Sketchy Doodles with Flowers and Butterfly” (“3D Peace Sign”). A copy of this artwork is attached hereto as Exhibit 1.

8. The 3D Peace Sign was published online on Shutterstock on November 7, 2009. As published on Shutterstock, the artwork contained an appropriate copyright notice under Volinski’s online moniker “blue67design.”

9. On August 22, 2012, Volinski filed an application with the Copyright Office to register her 3D Peace Sign and Certificate of Registration No. VA 1-835-961 has been issued with respect to the same. A copy of the Registration is attached hereto as Exhibit 2.

COUNT I

COPYRIGHT INFRINGEMENT

10. Without license or permission from Volinski, Design Works has copied significant portions of Volinski's artwork and has created a derivative work (Derivative Work) incorporating Volinski's artwork.

11. After creating the Derivative Work, Design Works offered the same for sale to P & A falsely representing to P & A that the Derivative Work was Design Works' original creation.

12. After purchasing the Derivative Work from Design Works, P & A reproduced the same on bedding which it sells to the public under the name St. Moritz. A photographic of P & A's St Morits bedding is attached hereto as Exhibit 3.

13. On information and belief, at all times relevant to the acts of Design Works, the company had actual as well as constructive notice and knowledge of Volinski's copyrights but proceeded in complete disregard thereof. Design Works' infringement of Volinski's copyrights, therefore, was willful and deliberate.

14. P & A's acts of reproducing the Derivative Work on bedding and selling the same without license or permission from Volinski also constitute copyright infringement.

COUNT II

VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

15. Plaintiff repeats and realleges paragraphs 1-14 above as if fully set forth herein.

16. When copying Volinski's work, Design Works intentionally removed the copyright management information that had been published with the work and sold the Derivative Work to P & A knowing that the copyright management information had been removed without Volinski's authority.

17. Design Works knew or had reasonable grounds to know that the removal of the copyright management information would induce, enable, facilitate or conceal infringement of Volinski's rights.

18. Plaintiff has suffered damages as a result of Design Works' unauthorized removal of copyright management information and the subsequent distribution of infringing copies of her work. Design Works' actions, therefore, constitute violations of 17 U.S.C. §1202.

WHEREFORE, Volinski prays for judgment against Design Works and P & A as follows:

A. That Design Works and P & A, their agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice hereof be enjoined pendente lite and permanently from infringing Volinski's copyright and from manufacturing or distributing infringing products including the St. Moritz bedding.

B. That Design Works and P & A, their agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice

hereof be enjoined pendente lite and permanently from distributing any products that contain false or removed copyright management information.

C. That, in accordance with 17 U.S.C. §503 and 17 U.S.C. §1203, all infringing products in Design Works' or P & A's possession or control be impounded by the Court during the pendency of this action and thereafter destroyed.

D. That Design Works and P & A be required to account for and pay over to Volinski all gains, profits and advantages derived by them and, in addition, the damages sustained by Volinski as a result of their infringement and their violation of 17 U.S.C. §1202 together with legal interest from the date of accrual.

E. That pursuant to 17 U.S.C. §1203(b)(5) Design Works and P & A be required to pay Volinski reasonable attorney's fees.

F. That Volinski have such other and further relief as this Court deems just and proper.

NORMAN E. LEHRER, P.C.

By: /s/ Norman E. Lehrer
Norman E. Lehrer
Attorneys for Plaintiff

Dated: October 24, 2014

DEMAND FOR JURY TRIAL

Plaintiff, by her attorney, hereby demands a trial by jury of all issues triable by jury.

NORMAN E. LEHRER, P.C.

By: /s/ Norman E. Lehrer
Norman E. Lehrer
Attorneys for Plaintiff

DECLARATION UNDER LOCAL RULE 11.2

I hereby declare that, to the best of my knowledge, this matter is not the subject of any other pending action in any court, or of any pending arbitration or administrative proceeding.

NORMAN E. LEHRER, P.C.

By: /s/ Norman E. Lehrer
Norman E. Lehrer
Attorneys for Plaintiff